

REMARKS

This is in response to the Office Action mailed on July 6, 2006. Claims 32-38 were withdrawn from consideration as being directed to a non-elected invention. Claims 1-2, 4-6, 21-22, 39 and 40 were rejected under 35 U.S.C. § 102(b) as being anticipated by Petterson, U.S. Patent No. 4,350,272 (hereinafter “the Petterson patent”). Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Petterson patent. Claims 7-20 were allowed. Claims 23-31 were objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims.

Election/Restriction

In Applicant’s previous response filed on April 12, 2006, Application’s election of invention I (claims 1-31, and 39-40) was made with traverse, and claim 32 was amended to depend from claim 1. As provided under M.P.E.P. § 821.04, Applicant requests that dependent claims 32-38 be considered for rejoinder when independent claim 1 is allowed.

In the Office Action mailed on July 6, 2006, paragraph 2 of page 2 states that “[c]laims 39-40 are withdrawn from further consideration pursuant to 37 C.F.R. 1.142(b), as being drawn to a nonelected invention.” Applicant assumes that this reference to claims 39 and 40 was a typographical error and that the Examiner meant to list claims 32-38 as being withdrawn. This assumption is based on the fact that, in the Office Action mailed on March 17, 2006, claims 39-40 were classified with claims 1-31 under Invention I, and claims 32-38 were classified as Invention II. Moreover, the Office Action Summary for the Office Action mailed on July 6, 2006 lists claims 39 and 40 as rejected under the Disposition of Claims section.

Rejections under 35 U.S.C. § 102(b) and § 103(a)

Claims 1-2, 4-6, 21-22, 39 and 40 were rejected under 35 U.S.C. § 102(b) as being anticipated by the Petterson patent. For a claim to be anticipated, each and every element as set forth in the claim must be found in a single prior art reference. See M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)). With this amendment, independent claims 1 and 21 require that the liner portion of the

container is configured to dispense the liquid while pressurized gas from an external source is introduced between the rigid portion and the liner portion. (See Appl. at p. 5, line 20 – p. 6, line 3; and p. 13, line 14 – p. 14, line 1.)

The container of the present application is configured such that the container is not pressurized until the liquid is to be dispensed. After dispensing of the liquid begins (i.e. by pressuring the point between the rigid portion and the liner portion), “[t]he pressurizing may continue until liquid 38 is fully dispensed” (Appl. at p. 13, line 23) or “[d]ispensing is discontinued by closing off the pressurized gas line” (Appl. at p. 13, line 28). Thus, the container of the present application allows for a real-time controlled liquid dispense by controlling an introduction of gas into the container.

In contrast, the package in the Petterson patent is pre-pressurized prior to dispensing of any liquid. (See col. 5, ll. 29-48.) The package in Petterson is a disposable aerosol barrier package. Similar to conventional aerosol cans, the package in Petterson is assembled by filling the package with the product to be disposed of, attaching a closure member (which includes a dispensing valve), and injecting a pressurized fluid into a bottom portion of the package. The product is ready for dispensing after the package is fully pressurized. To release the product, the dispensing valve is actuated. As the product exits the package, the pressurized fluid expands within the package. Thus, the pressurized fluid in Petterson causes a delayed pressure dispense that is initiated by the dispensing valve.

The Petterson patent does not teach or suggest a container configured to dispense the liquid while pressurized gas from an external source is introduced into the container. Because this limitation is not disclosed in the Petterson patent, amended claims 1 and 21 are not anticipated by the Petterson patent.

Claims 2, 4-6, and 22 depend respectively from claims 1 and 21, and are allowable therewith. In addition, it is respectfully submitted that the combinations of features recited in claims 2, 4-6, and 22 are independently patentable, although this does not need to be specifically addressed herein since any claim depending from a patentable independent claim is also patentable. See M.P.E.P. § 2143.03, citing *In re Fine*, 5 U.S.P.Q.2d (BNA) 1596 (Fed. Cir. 1988).

Claim 39, as amended, requires “introducing pressurized gas from an external source between the liner portion and the exterior rigid portion, wherein the interior liner portion

separates from the exterior rigid portion to collapse within the container and dispense the liquid through the container mouth while the pressurized gas is introduced from the external source.” As described above, the container of the present application is configured such that introducing pressurized gas between the interior liner portion and the exterior rigid portion collapses the liner portion within the container and dispenses the liquid through the container mouth. The method of claim 39 requires that dispensing is caused by introducing pressurized gas from an external source, and dispensing happens while the pressurized gas is introduced.

The Petterson patent, as also described above, discloses a package that is pre-pressurized such that the product may be dispensed at a later point in time. Thus, in Petterson, the product is dispensed separately from pressurizing the package; and more specifically, the product is dispensed only when the dispensing valve is actuated.

The Petterson patent does not teach or suggest a method of dispensing liquid whereby the liquid dispenses through the container mouth while the pressurized gas is introduced from an external source. Because the Petterson patent does not teach or suggest all of the steps required in amended claim 39, claim 39 is not anticipated by the Petterson patent.

Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Petterson patent. Claim 3 is dependent on claim 1, and is allowable therewith.

Allowed Claims

Applicant gratefully acknowledges the allowance of claims 7-20. The Office Action states that claims 23-31 were objected to as being dependent upon a rejected base claim (i.e. claim 21), but would be allowable if rewritten in independent form including all of the limitations of the base claim. With the above amendments to independent claim 21, Applicant respectfully asserts that claim 21 is now in condition for allowance. Thus, dependent claims 23-31 are also allowable.

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CONCLUSION

Because the prior art of record does not teach, show or suggest all the limitations in claims 1-6 and 21-22, claims 1-39 are now in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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